

Fiscal Impacts of Proposed Rules

Rule Topic: Request for Clarification of Requirements

Rule Citation: 15A NCAC 02L .0507 – Reclassification of Risk Levels

Agency: Environmental Management Commission

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Impact Summary: *De Minimis Rule Change*
Federal government: None
State government: None
Local government: None
Substantial impact: No

Authority: **§ 143-215. Effluent standards or limitations.**

Necessity: The Division of Waste Management has received a request to clarify requirements for remedial action when contamination has migrated offsite. This modification does not change the legal requirements for remedial action or the Division’s implementation and enforcement of the statute.

I. Summary

The rule modification addresses non-UST petroleum releases. The rule change clarifies the procedures for remediation of sites with off-site migration by referring the public to the provisions of G.S. 143-215.104AA (copied below). There is no cost change of the rule modification because it is already required by statute and enforced by the Division of Waste Management.

The proposed effective date is March 1, 2017.

II. Introduction and Purpose of Rule Change(s)

The Division of Waste Management has received a request to clarify requirements for remedial action when contamination has migrated offsite. This modification does not change the legal requirements for remedial action or the Division’s implementation and enforcement of the statute.

This rule modification is contained in 15A NCAC 02L .0507 - see Appendix A.

Under the authority of **§143B-282**, the Environmental Management Commission is directed to adopt rules for the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products.

Session Law 2015-286 added **§143-215.104AA** during the rule making process for the 15A NCAC 02L .0500's, this addition included an additional procedure in the risk-based remediation process **§143-215.104AA(e)** as follows.

(e) Remediation of sites with off-site migration shall be subject to the following provisions:

- (1) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part if either of the following occur:
 - a. The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.
 - b. The person who proposes to conduct the remediation pursuant to this Part (i) provides the owner of the contaminated off-site property with a copy of this Part and the publication produced by the Department pursuant to subdivision (2) of this subsection and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part. Provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.
- (2) In order to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property, the Department, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing. The Department shall update the publication as necessary.
- (3) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property, the responsible party shall be liable for the additional remediation deemed necessary.

- (4) Nothing in this subsection shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law.

III. Impact Analysis

This rule change provides a reference to the required statutory process that is protective of neighboring property rights. The statute prevents risk-based remediation from being used for contaminated off-site properties without the agreement of the owner of the off-site contaminated property. This rule amendment does not create any additional costs for the regulated community or state or local governments as it does not propose any changes from the existing remediation process.

There are no quantifiable benefits from this rule change, but the regulated community will benefit from improved clarity regarding the legal processes for remediation of sites with off-site migration.

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APPENDIX A

**SECTION .0500 - RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR NON-UST
PETROLEUM RELEASES**

15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS

(a) The Department may reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions that the Department believes may result in a lower risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes may include changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release.

(b) Remediation of sites with off-site migration shall be subject to the provisions of G.S. 143-215.104AA.

~~(b)~~ (c) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), (g), and (h) of this Subchapter. The goal of any required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible as determined by the Department. In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use shall not increase the risk to the environment and human health as determined by the Department. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

~~(c)~~ (d) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of Rule .0106(c) and (g) of this Subchapter. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of this Subchapter. Discharges or releases that are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower for any groundwater contaminant except

1 ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes. Ethylene dibromide and
2 benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard as referenced
3 in 15A NCAC 18C .1518 is hereby incorporated by reference including subsequent amendments and editions
4 and is available free of charge at [http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 -
5 environmental health/subchapter c/15a nca 18c .1518.pdf](http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a nca 18c .1518.pdf). Additionally, if a corrective action plan or
6 groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the
7 groundwater cleanup levels are sufficient to prevent a violation of:

- 8 (1) the rules contained in 15A NCAC 02B;
- 9 (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in
10 Rule .0506(2)(b) of this Section; and
- 11 (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year
12 time of travel upgradient of a well within a designated wellhead protection area, based on travel time
13 and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater
14 migration that exists or will be installed by the person making the request.

15 In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the
16 benefits of its use shall not increase the risk to the environment and human health and shall not increase the
17 costs of the corrective action.

18 ~~(d)~~ (e) If the risk posed by a discharge or release is determined by the Department to be a low risk, the
19 Department shall notify the responsible party that no cleanup, no further cleanup, or no further action will be
20 required by the Department, unless the Department later determines that the discharge or release poses an
21 unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification shall
22 be issued pursuant to this Paragraph, however, until the responsible party has completed soil remediation
23 pursuant to Rule .0508 of this Section or as closely thereto as economically or technologically feasible as
24 determined by the Department; has submitted proof of public notification and has recorded any land-use
25 restriction(s), if required; and paid any applicable statutorily authorized fees. The issuance by the Department
26 of a notification under this Paragraph shall not affect any private right of action by any party that may be
27 affected by the contamination.

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29 *History Note:* Authority G.S. 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA;
30 Eff. March 1, 2016.
31 Amended Eff. [month] 1, 2017